

what is here called the steadying roller, and there the cloth tension roller, in combination with the carrying roller, as arranged to steady the cloth; and the sixth is for the combination of the flock sifter with the beaters. These are the only claims in question. The bar of the defendants is not the equivalent of the improvement of the plaintiff's cloth tension roller upon Sorel's stretcher; and the use of it in the combination mentioned, which is not itself new, is not an infringement. The same is true of the flock sifter of the sixth claim. As the patent and these claims must be construed to be upheld, the defendants are not shown to infringe either claim. Let a decree be entered adjudging that the defendants do not infringe, and that the bill be dismissed, with costs.

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WILSEY v. THE SHIP CELESTIAL EMPIRE and the TUG-BOAT  
SETH LOW.

(District Court, E. D. New York. May 26, 1880.)

**ADMIRALTY—NEGLIGENCE.**—A ship coming up to a pier in the harbor of New York, in tow of a tug, was necessarily allowed to strike the side of a schooner, lying at the pier, in swinging into her berth. The touching was foreseen by those on the schooner, as well as on the ship, and fenders were put out. The schooner's rail was broken in and her side badly damaged, and the owner libelled both the ship and her tug. *Held*, that the tug was not liable, but the ship was liable for negligence, in placing her fender improperly, for the damage to the broken rail.

*Benedict, Taft & Benedict*, for libellant.

*S. M. Parsons and Beebe, Wilcox & Hobbs*, for defendants.

BENEDICT, D. J. There was no fault on the part of the tug Seth Low, and the libel must be dismissed as against that vessel, and with costs.

It was negligence on the part of the ship, when coming along-side the schooner, to permit a heavy fender to hang so that it caught upon the rail and not upon the hull of the

schooner. I do not find that it was negligence on the part of the ship to come along-side the schooner with the force she did, and I am satisfied that coming as she did would have done no damage to a sound vessel, if the ship's fender had been arranged so as to take the schooner's side properly. But here lies the fault on the part of the ship. One of her heavy fenders was so hung that the whole weight of the ship was brought upon the rail of the schooner, instead of upon the schooner's side, and damage necessarily resulted. For the damage caused to the schooner by the pressure of the fender at the place where the rail was broken, I hold the ship to be liable.

Let a reference be had to ascertain the amount of that damage.

## TOLMAN v. LEATHERS.

(Circuit Court, D. Iowa. May, 1880.)

**HOMESTEAD — MARRIED WOMAN — CONTRACT FOR MORTGAGE BEFORE MARRIAGE.**—A contract for the loan of money upon mortgage security will not defeat the wife's right of homestead, under the statute of Iowa, upon the subsequent marriage of the mortgagor before the execution of the mortgage.

In Equity.

*Brown & Campbell*, for plaintiff.

*Harvey & Lehman*, for defendant.

MILLER, A. J. Leathers, an unmarried man, residing on and owning a quarter section of land (160 acres) in Iowa, made application to Tolman, a citizen of Massachusetts, to borrow of him the sum of \$1,500, on the security of a mortgage on said land. The application was made on the tenth day of September, A. D. 1875, and accepted by Tolman, in writing, on the 18th of the same month. Tolman prepared a mortgage and note to be executed by Leathers, and a draft for the money *to be delivered* to said Leathers, as the bill alleges, *upon the due execution of the note and mortgage.*

The bill further alleges that on the thirteenth day of October Leathers duly executed and delivered said notes and mortgage, and acknowledged the latter, and received the draft for the money.

Default being made on the conditions of the mortgage, Tolman foreclosed it by suit in court against Leathers alone, and bought in the land under the decree. After this he learned that Leathers had married pending the negotiations for the loan—that is, after his acceptance of Leathers' proposition, and before the notes, mortgage and draft were delivered, and before the mortgage was executed and acknowledged. Tolman had no knowledge of the marriage when he parted with the money, and the wife had no notice of the agreement for the loan and mortgage at the time of the marriage. She asserts a right of homestead in the 40 acres on which the dwelling-house stands, and the present bill is brought for the pur-